**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2005-0231, State of New Hampshire v. Wendy Wolfson, the court on February 6, 2006, issued the following order:**

Following a hearing, the defendant, Wendy Wolfson, was found guilty of violating Plymouth zoning ordinances for displaying signs without a land use permit and for displaying prohibited signs. On appeal, she contends that: (1) the zoning ordinance prohibiting "intensely lighted signs" is unconstitutionally vague; (2) the prosecution failed to prove the signs were intensely lighted; and (3) because her signs were interior signs she did not violate an ordinance that was limited to the use of exterior signs. We affirm in part and reverse in part.

Article IV, section 408.3 A of the Plymouth Zoning Ordinances provides: "The following types of signs are expressly prohibited in all districts unless otherwise provided for in this article. A. Animated, moving, flashing, or intensely lighted signs and signs that emit sound, or visible matter (e.g. smoke, bubbles, water)." Although the defendant contends that the term "intensely lighted signs" is unconstitutionally vague, she did not raise this argument in the trial court. We therefore will not consider it on appeal. See N. Country Envtl. Servs. v. Town of Bethlehem, 150 N.H. 606, 619 (2004) (parties may not have appellate review of issues not raised in trial court); Town of Nottingham v. Newman, 147 N.H. 131, 137 (2001) (rules regarding preservation of issues on appeal not relaxed for pro se litigants).

Nor are we persuaded that the prosecution failed to prove that the signs were intensely lighted. The Land Use Enforcement Officer for Plymouth testified that he observed the signs during daylight hours from a public way located off the property and that they were intensely lit; he also provided photographs of the signs. The defendant testified that the signs were located inside her building and that they were used to attract business and had been effective in doing so. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that the defendant violated the Plymouth zoning ordinances by unlawfully displaying intensely lighted signs. See State v. Grimes, 152 N.H. 310, 311-12 (2005). Accordingly, we affirm the trial court's finding.

The defendant also argues that because the signs that were the subject of the complaint were located in the interior of her business, she did not violate article VI, section 412 D of the Plymouth Zoning Ordinances. Article VI, section 412 D provides: "Home occupations are permitted in all zones with the following conditions: . . . D. There shall be no indication of the operation of the Home Occupation visible on the exterior of the building or on the lot, except a permitted sign."

The interpretation of an ordinance is a question of law, which we review de novo. Harrington v. Town of Warner, 152 N.H. 74, 79 (2005). The traditional rules of statutory construction generally govern our review; the words and phrases of an ordinance are construed according to the common and approved usage of the language. Id. When the language of an ordinance is plain and unambiguous, we will not look beyond it for further indications of intent, nor guess at the drafters' intent. Id.

Here, four neon signs and two backlit signs were mounted on the inside of windows facing a public way that advertised the defendant's business. The plain language of the ordinance states, in relevant part, that there shall be "no indication of the operation" of the business "visible on the exterior of the building or on the lot." It is obvious that the phrases "on the exterior of the building" and "on the lot" refer to the location of the "indication of the operation" of the business, rather than the location from which the "indication of the operation" of the business is visible. For example, an indication of the operation of the business that was visible on the lot, but which was properly screened so that it was not visible on the public way or neighboring lots, would clearly not be prohibited by the ordinance. Cf. Plymouth Zoning Ordinances, art. VI, sec. 412 E (outdoor storage of materials or equipment permitted if screened so as not to be visible from public areas). Thus, the issue before us is whether the "indication of the operation" of the business was located "on the exterior of the building" or "on the lot." We conclude that the "indication of the operation" of the business in this case refers to the signs; the signs were not located "on the exterior of the building" or "on the lot." Accordingly, the plain language of the ordinance leads us to the conclusion that the defendant's signs did not violate article VI, section 412 D, and we therefore reverse the trial court's finding on this issue.

Because we are unable to discern from the record whether the fine imposed by the court would be affected by our ruling today, we remand this case to the trial court for such further action as it deems appropriate.

Affirmed in part; reversed in part; remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,**
**Clerk**